

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

BROADCAST MUSIC, INC.,	§	
SONY/ATV LATIN MUSIC	§	
PUBLISHING LLC,	§	
§		
Plaintiffs,	§	Civil Action No. 3:13-cv-01760-M
§		
v.	§	
§		
EL VOLCAN SOCIAL CLUB, INC.	§	
d/b/a FAR WEST/EL VOLCAN	§	
SOCIAL CLUB, AND ALFREDO	§	
HINOJOSA, individually,	§	
§		
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' Motion for Substitute Service [Docket Entry #13]. For the reasons set forth below, the Court **DENIES** Plaintiffs' Motion as moot.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from alleged copyright infringement by Defendants El Volcan Social Club, Inc. ("El Volcan") and Alfredo Hinojosa ("Hinojosa"). Plaintiffs successfully served El Volcan, but were unsuccessful in their three attempts to serve Hinojosa. *Pls.' Mot. for Substitute Service of Process* at 2. Plaintiffs filed the instant motion on June 19, 2013 [Docket Entry #13]. On July 9, 2013, Hinojosa filed his answer to Plaintiffs' Complaint [Docket Entry #14].

II. ANALYSIS

Rule 12(h)(1) of the Federal Rules of Civil Procedure provides that a party waives certain defenses, including the defense of insufficient service of process, by failing to either make it in a motion under Rule 12, or include it in a responsive pleading. Fed. R. Civ. P. 12(h)(1); Fed. R.

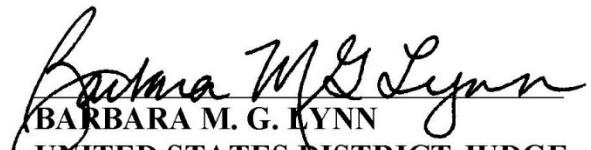
Civ. P. 12(b)(5). If a party does not make a motion under Rule 12, he must include the defense of insufficiency of service of process in his responsive pleading. *Golden v. Cox Furniture Mfg. Co., Inc.*, 683 F.2d 115, 118 (5th Cir. 1982). Objections to service of process “must be raised in a timely fashion, *i.e.*, as a party’s first pleading in the case, or they are waived.” *Broadcast Music, Inc. v. M.T.S. Enterprises, Inc.*, 811 F.2d 278, 281 (5th Cir. 1987) (citing Fed. R. Civ. P. 12(h)(1); *Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1298 (5th Cir. 1985)).

Hinojosa has failed to file any motion contesting the alleged insufficient service, and did not raise insufficient service as an affirmative defense in his answer. *Def.’s Answer and Affirmative Defenses* at 4–5. Any subsequent attempt to raise insufficient service as a defense will be “untimely,” and, thus, Hinojosa’s ability to raise such a defense is precluded. *See Broadcast Music*, 811 F.2d at 281.

For all of these reasons, Plaintiffs’ Motion is **DENIED as moot**.

SO ORDERED.

Date: July 11, 2013.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS